



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

December 17, 2010

Richard J. Muraski, Jr.  
Colonel, Corps of Engineers  
Fort Worth District  
819 Taylor Street, Room 3437  
P.O. Box 17300  
Fort Worth, Texas 76102-0300

Dear Colonel Muraski:

In accordance with our responsibilities under Section 309 of the Clean Air Act, the National Environmental Policy Act (NEPA), and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Draft Environmental Impact Statement (DEIS) prepared by the Fort Worth District Corps of Engineers for the Rusk Permit Area Expansion of the existing South Hallsville No. 1 Mine. The Sabine Mining Company, a subsidiary of the North American Coal Corporation, proposes to construct, operate, and reclaim the Rusk Permit Area.

The proposed action requires an Individual Permit from the U.S. Army Corps of Engineers for the discharge of dredged and fill material into waters of the U.S. under Section 404 of the Clean Water Act. The Corps of Engineers is the lead Federal agency preparing the DEIS. The U.S. Fish and Wildlife Service, the EPA, and the Texas Parks and Wildlife Department are cooperating agencies.

EPA rates the DEIS as "EC 2," i.e., EPA has "Environmental Concerns to the Proposed Permitting Action and Requests Additional Information." EPA's concerns are specific to wetland functional assessment methodology and mitigation. Our enclosed detail comments are offered to explain our concerns and to insure full compliance with the requirements of NEPA and the CEQ regulations. EPA asks that these comments be addressed and responded to in the Final EIS (FEIS).

Our classification will be published on the EPA web site: [www.epa.gov/compliance/nepa/index.htm](http://www.epa.gov/compliance/nepa/index.htm), according to our responsibility under Section 309 of the Clean Air Act to inform the public of our views on proposed Federal actions. If you have any questions, please contact Mike Jansky of my staff at (214) 665-7451 or by e-mail at [jansky.michael@epa.gov](mailto:jansky.michael@epa.gov) for assistance.

EPA appreciates the opportunity to review the DEIS. Please send our office five copies of the FEIS when it is sent to the Office of Federal Activities, EPA (Mail Code 2252A), Ariel Rios Federal Building, 1200 Pennsylvania Ave, N.W., Washington, D.C. 20004.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Rhonda M. Smith", is written over a horizontal line.

Rhonda M. Smith, Chief  
Office of Planning and  
Coordination 6ENXP

Enclosure



**DETAILED COMMENTS  
ON THE  
U.S. ARMY CORPS OF ENGINEERS  
FORT WORTH DISTRICT  
DRAFT ENVIRONMENTAL IMPACT STATEMENT  
FOR THE  
SABINE MINING COMPANY RUSK PERMIT AREA  
RUSK, HARRISON, AND PANOLA COUNTIES, TEXAS**

**BACKGROUND:** Sabine Mining Company proposes to construct, operate, and reclaim an expansion of the South Hallsville No. 1 Mine. The new 20,377 acre-area is located south of the existing mine and across the Sabine River into Rusk, Harrison and Panola counties, Texas. Surface mining operations would continue with conventional open pits excavated by large draglines and supported by standard earth moving equipment such as loading shovels, dozers, end dumps, and scrapers.

**COMMENTS:** The following are now offered for your agency's consideration in finalizing the DEIS:

1. Proposed Conceptual Mitigation Plan, South Hallsville No. 1 Mine Rusk Permit Area: Functional Assessment.

The DEIS utilizes the term "functional assessment" to describe the methods utilized for assessing impacts and mitigation requirements. However, neither method is a functional assessment in that neither provides an assessment of independent functions. Instead, the methods are more representative of Level II conditional assessment that utilizes various metrics to derive a single score typically referred to as a condition score. Typically Level II assessments are utilized for smaller or less controversial projects. Level III assessments are meant for larger or more controversial projects where detailed information is required. The Regional "Guidebook for Applying the Hydrogeomorphic Approach to the Functional Assessment of Forested Wetlands in Alluvial Valleys of East Texas" is a more appropriate method for assessing functional impacts proposed by the project. Also available, is the Regional "Guidebook for Applying the Hydrogeomorphic Approach to Assessing Wetland Functions of Forested Wetlands in the West Gulf Coastal Plain Region of Arkansas", which is also more appropriate.

The two interim methods described as previously approved by the Fort Worth District Corps of Engineers for use by the applicant for this project, are unfamiliar to EPA Region 6. EPA is unaware of any work by state or federal agencies or any academic validation of these methods for use in the South Central Plains Ecoregion of Texas. Additionally, the DEIS states that both methods were modified to adapt them to local conditions. It appears that the changes made favor lower compensation ratios, which without a scientific validation study or review by appropriate experts, those changes appear questionable.



2. Another major concern is that the applicant utilized in its assessments "Reference Condition" based on reclaimed wetlands and streams at the South Hallsville No. 1 Mine. EPA disagrees with this approach, as it does not reflect the natural ecological conditions found in undisturbed/least disturbed sites of the region. A fundamental requirement for developing or adopting an assessment method in a particular area is that reference condition for specific wetland/stream types be identified and the method calibrated to that range of disturbances. It is not apparent that such efforts were made to adopt the two assessment methods to this region. Furthermore, utilizing recently created wetlands and streams at the South Hallsville Mine No. 1 as reference standard creates a false standard. The goal of the Clean Water Act (CWA) is to restore and maintain the chemical, physical, and biological integrity of the nation's waters so that they can support the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water. Without identifying the Reference Condition, the condition at sites able to support and maintain a balanced, integrated, and adaptive biological system having the full range of elements and process expected for a region, no valid assessment in regards to meeting the goal of the CWA can be made.

3. A major concern of this mitigation proposal is the suitability of post mining soils. No discussion was made as to how the hydric soils would be handled and it is assumed that they will be removed and incorporated into the oxidized overburden described as "growth media". Without appropriate soils capable of supporting hydric conditions the risk of mitigation failure is high. The applicant has proposed a 2:1 and a 1:1.5 mitigation ratio for forested and non-forested wetlands respectively. Historically, creation ratios are much higher due to the inherent risk for failure. As proposed, the amount of mitigation and the basis for which they were derived are in EPA's opinion inappropriate and would likely result in a net loss of wetland function. Additionally, EPA disagrees with the notion that incremental mining activity (five year phases) limits the impacts to waters of the U.S. Rerouting streams via drainage channels and interrupting streams with on-channel detention ponds effectively disconnects the ecological process in those systems. No mitigation credit for incremental mining is warranted. Temporal loss should be calculated from the first interruption of the project site until complete reclamation is achieved and mitigation sites are considered successful.

4. The DEIS provides little in the way of identifying the location and design of stream and wetland mitigation only citing the proposed amounts of each and depicting a general set of design profiles. EPA understands that landowner agreements will dictate the type of land that is ultimately put back. Without specific details as to stream and wetland locations and appropriate design based on fluvial geomorphology principles, EPA cannot fully evaluate compliance with Section 404 of the CWA. More detail in the way of verifiable and enforceable location and designs are needed.

5. Sabine River Crossing/Transportation and Utility Corridor: The applicant proposes to cross the Sabine River and its associated floodplain by construction of a river bypass channel and constructing a walkway on which to move the large draglines. The applicant has proposed to leave the material in the floodway, but modify it so that approximately 60 percent of it is re-excavated and placed on top of the remaining roadway above the 100 year floodplain. According to the DEIS the anticipated dates for moving the draglines will be; 2012 for the first

two, 2018 for the next one and the last one in 2027. Being that the walkway would serve no project purpose during the 15 or more years it sits idle between walks, EPA recommends all fill material be removed as it may have a disruptive influence on the floodplain and associated waters of the U.S.

6. Restoration of Waters of the U.S., Including Wetlands: The linear feet of each type of stream impact should be listed in addition to the acreage. If the acreage is used, the calculation should use 100 ft. of riparian buffer plus the stream.

7. Site Protection: Long term protection of wetland and stream mitigation sites need to be addressed. As it now stands, the applicant is deferring to the CWA 404 permit to serve as protection of mitigation sites. In that it may take more than 20 plus years for forested wetlands to become fully functional and mitigation to reach its full ecological lift, protection should be afforded at least until that point.